

Procedural Steps for Processing Tribal Applications for TAS Eligibility for the Clean Water Act Water Quality Standards and Certification Programs¹

As a general matter, the U.S. Environmental Protection Agency process for reviewing federally recognized Indian tribes' (tribe or tribal) applications for treatment in the same manner as a state (TAS) eligibility for the Clean Water Act (CWA) water quality standards (WQS) and certification programs consists of five steps. They are:

- **Step 1: The Tribe Submits an Application.**² Tribes are encouraged to work with EPA in developing their TAS eligibility applications to administer a WQS and certification program. Drafts or components of the application may be shared with EPA before being formally submitted to the Agency. After EPA examines the tribe's application, EPA may request additional information.

Step	Description	Responsibility
1A	Pre-application discussions and technical assistance (if appropriate)	Joint Tribe-EPA
1B	EPA review of pre-application materials (if requested)	
1C	Tribe submits application to EPA	
1D	EPA initial review and request for additional information (as appropriate) as soon as practicable.	EPA (Region) ³
1E	Tribe submits additional information (if requested)	Tribe

- **Step 2: Comment Period.** Within 30 days of receipt of an application that is ready for review, EPA provides appropriate governmental entities with notice of the tribe's application, including information as to the substance and basis of the tribe's claims regarding authority to regulate reservation water quality, and provides 30 days for comments on the tribe's assertion of authority. EPA also publishes a notice in relevant newspapers, offering the public the opportunity to provide comments on tribal authority through appropriate governmental entities. EPA then affords the tribe the opportunity to respond to the comments.

¹ This document sets out the procedures EPA intends to follow in processing TAS applications under the CWA WQS and certification programs. EPA retains the discretion to deviate from this process when appropriate. This document imposes no binding legal requirements.

² Special provisions of law apply to tribes in the State of Oklahoma. Tribes in Oklahoma should contact EPA for more information on TAS eligibility for EPA regulatory programs.

³ EPA regions always have the lead for communicating with the tribe and will generally be the lead for the EPA team, which consists of EPA regional and headquarters personnel, involved in processing a particular application. The team is generally activated when an application is received and works collaboratively as needed, especially in later stages of substantive review and preparation of decision documentation.

Attachment A

Step	Description	Responsibility
2A	EPA notifies appropriate governmental entities and the public (within 30 days after receipt of a tribal application that is ready for review)	EPA (Region)
2B	Comment period (30 days) ⁴	Commenters
2C	Within 45 days of the close of the comment period, EPA assembles comments, provides them to the tribe, and discusses a tentative schedule and next steps	EPA (Region)
2D	Tribe responds to comments (if any)	Tribe

- **Step 3: EPA Review.** A team of EPA regional and headquarters staff reviews the application to determine whether it meets the requirements for eligibility. EPA may request additional information from the tribe, as appropriate.

Step	Description	Responsibility
3A	EPA reviews comments and tribal response (if any)	EPA (Team)
3B	Within 90 days, to the extent practicable, of the close of the comment period, EPA discusses the need for any additional information with the tribe (as needed)	EPA (Region)
3C	Tribe provides additional information (if requested)	Tribe

- **Step 4: Proposed Findings of Fact (if needed).** Where appropriate, EPA prepares a proposed Findings of Fact document regarding tribal authority over nonmember activities on the reservation that would form a basis for EPA's decision on whether the tribe has adequate authority for purposes of the WQS and certification programs. After EPA has received comments from the tribe, if any, on the draft proposed findings of fact, EPA provides the proposed findings of fact to appropriate governmental entities. EPA also offers the public the opportunity to provide comments on the proposed factual findings through appropriate governmental entities. The tribe is given the opportunity to respond to comments received.

⁴ In some cases, it may be appropriate for EPA to extend the comment period. EPA coordinates with the tribe prior to allowing an extension of the comment period.

Step	Description	Responsibility
4A	EPA reviews comments, tribal response to comments (if any), and additional information (if any)	EPA (Team)
4B	EPA prepares a draft proposed Findings of Fact	EPA (Team)
4C	Tribe provides comments, if any, on draft proposed Findings of Fact	Tribe
4D	EPA issues proposed Findings of Fact and notifies appropriate governmental entities ⁵ and the public	EPA (Region)
4E	Comment period (30 days) ⁶	Commenters
4F	Within 45 days of the close of the comment period, EPA assembles comments, provides them to the tribe, and discusses a tentative schedule and next steps	EPA (Region)
4G	Tribe responds to comments (if any)	Tribe

- Step 5: Final Decision.** Based on its review of all of the materials – including the application, any proposed findings of fact, and all comments submitted – the EPA team prepares a draft decision document, including a response to comments, and submits it for final review within the Agency. If EPA approves the tribe’s application, the findings of fact may be included as an appendix to the decision document. The EPA regional office notifies the tribe in writing of EPA’s decision regarding the tribe’s application. Where EPA approves the application, the approval letter and the decision document are transmitted to the tribe.

Step	Description	Responsibility
5A	EPA prepares decision document, response to comments	EPA (Team)
5B	EPA regional official signs decision document and notifies the tribe ⁷	EPA (Region)

⁵ EPA also provides supplemental application information, if any, to appropriate governmental entities.

⁶ In some cases, it may be appropriate for EPA to extend the comment period. EPA coordinates with the tribe prior to allowing an extension of the comment period.

⁷ In accordance with EPA’s delegation manual, regions will seek headquarters concurrence on the first TAS application for each program (including WQS) within a region.

Attachment A

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